

October 27, 2010

David Stawick, Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Agricultural Swaps ANPRM

Dear Secretary Stawick:

Cargill is an international provider of food, agricultural, and risk management products and services. As a merchandiser, processor and exporter of agricultural commodities, Cargill relies heavily upon efficient and well-functioning methods of risk management, including futures, options and swaps. Cargill is pleased to submit these comments in response to the Advance Notice of Proposed Rulemaking (“Notice”) of the Commodity Futures Trading Commission (“Commission” or “CFTC”) that was published in the Federal Register on September 28, 2010.

Cargill has been transacting agricultural swaps for 16 years and has also been entering into over the counter (“OTC”) agricultural trade options (“ATOs”) pursuant to the exemption established by the Commission in 1998. Cargill engages in these transactions as an end user to implement its own risk management programs and as a provider of risk management products to eligible contract participants (“ECPs”) who produce or process agricultural commodities and others who seek to participate in the agricultural commodities markets.

Agricultural swaps and OTC options have served the public good by allowing agricultural producers and processors to hedge their commodity price exposure economically and efficiently. Cargill is unaware of any issues arising from the use of these instruments that caused or even

contributed to the economic downturn in the fall of 2008. In implementing the provisions of the Dodd-Frank Act, therefore, the Commission should adopt rules that would encourage the continued use of these valuable hedging tools.

The Dodd-Frank Act includes heightened protections for all swaps, including agricultural swaps. Given that agricultural swaps have performed well, and that additional protections for all swaps are established under Dodd-Frank, we see no need or purpose for imposing additional regulatory requirements on agricultural swaps and options.

Although the Dodd-Frank Act permits the Commission to impose additional regulatory requirements on agricultural swaps, including options, it does not require that such additional requirements be imposed. Moreover, any additional requirements would discourage and make the use of these instruments less economical, penalizing hedgers seeking to mitigate risk.

Historically, the authority for differing treatment of agricultural swaps appears to be based, at least in part, on concerns that ECPs using agricultural products are not as capable of making economic decisions as are persons in other businesses. As an agribusiness company that deals with agricultural producers and processors on a daily basis, Cargill believes that these concerns are not valid. Furthermore, by restricting swap transactions to ECPs in the Dodd-Frank Act, Congress has already established a qualification standard that is designed to prevent persons who are unable to evaluate and bear the risks of these transactions from entering into them.

Finally, there is a segment of agricultural producers, who may not be eligible to utilize agricultural options which fall within the Dodd-Frank definition of agricultural swaps. We encourage the Commission to study this area. Today, agricultural producers who do not meet a net worth standard higher than the ECP definition standard are prohibited from accessing

ATOs. Trade options may be offered to non-ECPs on all physical commodities other than the enumerated agricultural commodities, *i.e.*, the commodities listed in CFTC Reg. §32.2. Trade options on the enumerated agricultural commodities, however, are subject to the requirements of CFTC Reg. §32.13, which requires registration of agricultural trade option merchants (“ATOMs”), imposes restrictions on the types of option transactions that can be offered, and also establishes an exemption that is more restrictive than the ECP definition.

Our experience with ATOs and other risk management tools utilized by agricultural producers and processors shows that these risk management products should be offered to such non-ECP persons as a useful risk management program. If the Commission seeks additional protection for non-ECPs, the Commission could preclude speculation by limiting the offer of ATOs to persons using them for commercial risk management purposes, restrict the types of option transactions to those listed in CFTC Reg. §32.13(a), and require a risk disclosure statement similar to that in CFTC Reg. §32.13(a)(7). Finally, Cargill believes it would be reasonable to require that only registered swap dealers offer such options.

In summary:

- Agricultural Swaps utilized by ECPs have been successful to-date, and with the enhanced protections afforded to all swaps in the Dodd-Frank bill, we see no reason for a bifurcated regulatory structure for this swap category.
- Consideration should be given to expanding hedging opportunities by allowing agricultural trade options to non-ECPs, provided the additional protections above are also established for this category of end-user.

Sincerely,

A handwritten signature in black ink, appearing to read "David Dines". The signature is fluid and cursive, with the first and last names being clearly distinguishable.

David Dines
President
Cargill Risk Management

**Cargill's Answers to Questions of CFTC in Advance Notice of Proposed Rulemaking
pertaining to Agricultural Swaps**

1. How big is the current agricultural swaps business--including both agricultural swaps trading under current part 35 and ATOs under Sec. Sec. 32.4 and 32.13(g) of the Commission's regulations?

Comment: Insufficient data to answer

2. What types of entities are participating in the current agricultural swaps business?

Comment: Examples are agricultural producers, food manufacturers, bakers, feed manufacturers, restaurants, hog producers, food and beverage companies, dairies, co-ops, banks, hedge funds, pension funds, endowments, and other ECPs.

3. Are agricultural swaps/ATO participants significantly different than the types of entities participating in other physical commodity swaps/trade options?

Comment: No

4. What percentage of existing agricultural swaps trading is cleared vs. non-cleared?

Comment: Insufficient data to answer

5. What percentage of existing agricultural swaps would be eligible for the commercial end-user exemption from the mandatory clearing requirement?

Comment: Insufficient data to answer

6. What percentage of trading would be subject to the Dodd-Frank clearing requirement, if that requirement applied automatically to agricultural swaps (other than those eligible for the commercial end-user exemption)?

Comment: Insufficient data to answer

7. What would be the practical and economic effect of a rule requiring agricultural swaps transactions (other than those eligible for the commercial end-user exemption) generally to be cleared? The Commission is interested in the views of agricultural swaps market participants (both users and swap dealers) regarding a potential clearing requirement for agricultural swaps.

Comment: Cargill believes that it is not feasible to clear all OTC swaps (whether agricultural swaps or not) due to the customized and tailored nature of many swaps. For those swaps that qualify for clearing, no rule requiring clearing of agricultural swaps should be adopted unless it

is applicable to all swaps on physical commodities. If a rule were adopted which required agricultural swaps to be cleared without requiring swaps based on other physical commodities to be cleared under the same circumstances, the practical and economic effect would be to discourage the use of agricultural swaps relative to other swaps. Moreover, even hedgers eligible for the end-user exemption would be disadvantaged because the liquidity and pricing of the agricultural swaps offered to them would be adversely affected by the diminished volume resulting from the increased cost of clearing these swaps relative to the cost of swaps not required to be cleared.

8. What would be the practical and economic effect of requiring agricultural swaps to be cleared under the Dodd-Frank clearing regime?

Comment: In addition to the effects listed in Cargill's response to Question 7, if end-users were also required to clear agricultural swaps, they would have to put up additional working capital to margin on the exchanges. Also, because clearing requires standardized swaps, a general requirement to clear all swaps will result in the inability to offer tailored, customized swaps as a risk management product.

9. Have current agricultural swaps/ATO participants experienced any significant trading problems, including: (a) economic problems (i.e., contracts not providing an effective hedging mechanism, or otherwise not performing as expected); (b) fraud or other types of abuse; or (c) difficulty gaining access to the agricultural swaps market?

Comment: Cargill is not aware of economic problems, fraud or other types of abuse experienced by agricultural swaps participants or ATO participants. Similarly, Cargill is not aware of persons who qualify as ESPs having any problems in gaining access to the agricultural swaps market.

There have, however, been problems with respect to prospective participants gaining access to ATOs, due to the restrictions in CFTC Reg. §32.13. Cargill has not been registered as an ATOM and therefore has not been able to offer ATOs to persons who do not qualify for the exemption in

CFTC Reg. §32.13(g). Moreover, the requirements for this exemption are more restrictive than those in the ECP and ESP definitions. The restrictions of CFTC Reg. 32.13 have therefore made ATOs unavailable to many persons, both ECP and non-ECP, who would have used them for hedging, as well as to ECPs who could have provided liquidity and better pricing through speculative trading.

10. Do agricultural swaps/ATO purchasers need more protections than participants in other physical commodity swaps/trade options?

Comment: Cargill does not believe that purchasers of agricultural swaps or ATOs that are regulated as swaps need more protections than other swaps participants assuming they will be required to be ECPs. If ATOs are allowed with non-ECPs, Cargill believes that additional protections would be appropriate.

11. If so, why, and what should those protections be?

Comment: One additional protection for ATOs offered to non-ECPs would be to preclude speculation by limiting their offer to persons using them for commercial risk management purposes and restrict the types of option transactions to those listed in CFTC Reg. §32.13(a).

In addition, Cargill believes that a risk disclosure statement similar to that in CFTC Reg. §32.13(a)(7) would be appropriate for agricultural options offered to non-ECPs. Finally, Cargill believes it would be reasonable to require that such options be offered only by registered swap dealers, in lieu of the current ATOM registration requirement.

12. Would additional protections for agricultural swaps purchasers unduly restrict their risk management opportunities?

Comment: If the additional protections for agricultural swaps purchasers who are non-ECPs consisted of those reflected in Cargill's response to Question 11, there would be no undue

restrictions on risk management opportunities. However, any additional regulatory burdens on agricultural swaps entered into by ECPs, which would not apply to other swaps, would be likely to restrict opportunities because they would increase the cost of such swaps, thereby making them less economical and less efficient while decreasing liquidity and widening spreads. If the additional protections consisted of all of the requirements currently in CFTC Reg. §32.13, the availability of ATOs to non-ECPs would be unduly restricted, as experience has shown that there has been little interest in non-exempt ATOs under the requirements of CFTC Reg. §32.13.

13. Should the Commission consider rules to make it easier for agricultural producers to participate in agricultural swaps - for example, by allowing producers who do not qualify as ECPs to purchase agricultural swaps?

Comment: Cargill is in favor of making options available to non-ECPs. The offer of these instruments could be limited to those persons who would use them for commercial risk management purposes, and they could be required to enter into these transactions only with registered swap dealers. Such persons, with proper risk disclosure, are capable of understanding the potential risks and rewards, and bearing the risks, and should have these risk management tools available to them. CFTC Reg. §32.2, which prohibits OTC options based on enumerated agricultural commodities, should be revoked. In addition action should be taken by the Commission to permit agricultural trade options under section 32.4, as amended, pursuant to section 4(c) of the Commodity Exchange Act. This change would permit the offer of ATOs that are not regulated as swaps to persons who are non-ECPs but are using them for commercial risk management purposes.

14. Should agricultural swaps transactions be permitted to trade on DCMs to the same extent as all other swaps are permitted on DCMs?

Comment: Yes, there is no reason to prevent agricultural swaps from trading on DCMs, but such trading should be in addition to, and not in place of, other venues for the trading of agricultural swaps on the same terms as other swaps.

15. If yes, why?

Comment: Allowing trading of agricultural swaps on DCMs to the same extent as other swaps would give participants and swap dealers the choice of an additional venue for trading them, and would maintain the same regulation for all swaps.

16. If no, what other requirements, conditions or limitations should apply?

Comment: Not applicable.

17. Should agricultural swaps transactions be permitted on SEFs to the same extent as all other swaps are permitted to transact on SEFs?

Comment: Yes, there is no reason to prevent agricultural swaps from trading on SEFs to the same extent as other swaps are permitted to transact on SEFs, but such trading should be in addition to, and not in place of, other venues for the trading of agricultural swaps on the same terms as other swaps.

18. If yes, why?

Comment: Allowing trading of agricultural swaps on SEFs would give participants and swap dealers an additional venue for trading them, and would maintain the same regulation for all swaps.

19. If no, what other requirements, conditions or limitations should apply?

Comment: Not applicable.

20. Should agricultural swaps be permitted to trade outside of a DCM or SEF to the same extent as all other swaps?

Comment: Yes.

21. If yes, why?

Comment: Agricultural swaps should be treated the same as other swaps and therefore trading should be allowed in the same venues. Such trading would provide more choice to market participants and dealers, and would make agricultural swaps available for both risk management purposes as well as for speculation to provide liquidity and better pricing.

22. If no, what other requirements, conditions or limitations should apply?

Comment: Not applicable.

23. Should agricultural swaps be permitted to trade outside of a DCM or SEF to a different extent than other swaps due to the nature of the products and/or participants in the agricultural swaps market?

Comment: No, agricultural swaps should be treated the same as other swaps.

24. In general, should agricultural swaps be treated like all other physical commodity swaps under Dodd-Frank?

Comment: Yes.

25. If yes, why?

Comment: There is no valid regulatory objective to be achieved by treating agricultural swaps differently from swaps on other physical commodities. To the extent there are differences to be taken into account in regulating agricultural swaps, such as seasonal variations in supply, these differences can be addressed with position limits.

26. If no, are there any additional requirements, conditions or limitations not already discussed in other answers that should apply?

Comment: Not applicable.

27. If agricultural swaps are generally treated like swaps in other physical commodities, are there specific agricultural commodities that would require special or different protections?

Comment: No.